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EXTENT OF THE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS. — The Supreme Court of the United States, with four justices dissenting, has just rendered a decision which marks the greatest extension, thus far reached, of the federal jurisdiction in admiralty. A contract for the repair of an Erie canal boat in a Middleport dry dock was declared to be a maritime contract; and the lien on the vessel, given in such cases by the New York statute, was consequently held to be enforceable only in the federal courts. *Perry* v. *Haines*, 24 Sup. Ct. Rep. 8.

Whether the contract in question was maritime the court properly held involved three considerations: first, the place where the repairs were made; second, the character of the boat repaired; and third, the nature and extent of the waters on which the boat was navigated. As to the first point, it was rightly laid down that a contract to repair in dry dock is not a contract to be performed on land in a sense to prevent its being maritime. Contracts for the repair of ships have long been recognized as peculiarly subject to admiralty jurisdiction,[1] and permanent repairs below the water line must almost always be made in dry dock. In discussing the second question, the character of the vessel, if it is engaged in commerce and navigation, it may, according to this opinion, be subjected to the exclusive admiralty jurisdiction of the federal courts. Any narrower holding would seem inconsistent with the course of accepted judicial opinion on the point. The admiralty jurisdiction had already been extended over an ordinary grain barge without means of propulsion,[2] a floating elevator,[3] and a bath-house

[1] The Lottawanna, 21 Wall. (U. S.) 558.
[2] The Northern Belle, 9 Wall. (U. S.) 526.
[3] The Hezekiah Baldwin, 8 Ben. (U. S.) 556.

built on boats and designed for transportation.[4] In considering the third point, the nature and extent of the waters on which this canal boat was employed, the court had only to follow a precedent they had themselves established in a case which arose from a collision on the Chicago canal.[5] After the admiralty jurisdiction had once been extended to non-tidal waters,[6] thus departing from the old English doctrine, there seems no logical stopping place short of the point the court has reached. That this waterway was artificial cannot be decisive against the jurisdiction. Most of the channels into ocean ports are kept open by dredging, and navigation on many of our great rivers is rendered practicable only by artificial means. That transactions on these waters are not within the view of the admiralty courts would hardly be contended.

The decision of the court, then, seems sound. That unusual interest attaches to the case arises not so much from the fact that it involves any single point of great difficulty, as from the combination of extreme features which it presents. After this decision there seems open to the court but one reasonable limitation on the extent of the admiralty jurisdiction, a limitation which will probably be sustained should occasion arise. Where a body of water is entirely within a single state, and forms no part of a highway connecting different states, or opening on the high seas, it would seem unnecessary and profitless for the federal courts to assert their exclusive admiralty jurisdiction.

DECLARATIONS TO PROVE NON-ACCESS. — It is a rule of long standing that a child born in wedlock is presumed legitimate.[1] This presumption even extends to a child born so shortly after marriage that conception must have taken place before.[2] It has also been commonly held that a husband and wife cannot, in order to rebut the presumption of legitimacy, testify to non-access in order to prove the bastardy of issue which has been conceived during the marriage.[3] A number of United States decisions have extended this rule to the case of children conceived before marriage but born after marriage, upon the ground, apparently, that as the presumption of legitimacy applies to such children, the rule of evidence should apply also.[4] The rule excluding testimony of non-access is commonly said to be founded on considerations of "decency, morality, and policy." The marriage of a man to a pregnant woman may perhaps in the great majority of cases be fairly taken to constitute an acknowledgment that the child is his. The law in presuming the child to be his acts apparently upon such grounds.[5] In this aspect of the case it may possibly seem that decency and policy require that a husband and wife remain unquestioned as to their intercourse before marriage. But there is good ground for an opposite view. Decency, morality, and policy may well require that a husband and wife be forbidden to testify to non-access during the married state, because such protection

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[4] The Public Baths, No. 13, 61 Fed. Rep. 692.
[5] *Ex parte* Boyer, 109 U. S. 629.
[6] The Genesee Chief, 12 How. (U. S.) 443.

[1] Co. Lit. 244 *a*.
[2] King *v.* Luffe, 8 East 193.
[3] Goodright *d.* Stevens *v.* Moss, Cowp. 592.
[4] Dennison *v.* Page, 29 Pa. St. 420; Rabeke *v.* Baer, 115 Mich. 328.
[5] King *v.* Luffe, *supra*.